REMARKS/ARGUMENTS

Status of Claims

Claims 7, 9, and 10 are currently amended.

Claim 8 is canceled.

Claims 16-32 are new.

Claims 1-6, and 11-15 were previously canceled.

As such, claims 7, 9, 10, and 16-32 are currently pending in this application.

Applicant hereby requests further examination and reconsideration of the presently claimed application.

Claim Rejections – 35 U.S.C. § 112

Claims 7, 9, 10, and 16-32 are currently pending. In Applicants' "Amendments and Response to Office Action Dated July 13, 2007" filed on September 7, 2007 (hereinafter "Final Office Action Response"), Applicants proposed certain amendments to claims 7, 9, and 10. However, said amendments were not entered as being unsupported by the specification. Via this Request for Continued Examination, Applicants proffer amended claims 7, 9, and 10; and new claims 16-32. Specifically, proposed amended claim 7 reads:

7. (Currently amended) A method of improving customer loyalty via **real time** generation and provision **to a customer** of a customer incentive report remote from a point of sale, said method comprising:

utilizing a computer to execute a plurality of steps, the steps comprising:

selecting a product information related to a product;

storing a purchase information related to the purchase of the product by a customer;

storing a customer information related to the customer, the customer information associating the customer with the purchase;

storing a promotion information related to a promotion of the product, the promotion being independent of the customer information, wherein the promotion information includes both current and future promotional incentives;

determining an intersection of the promotion information, the purchase information, and the customer information and storing the intersection in a database as the customer incentive report;

wherein the database comprises a first table containing the product information, a second table comprising the purchase information, and a third table comprising the promotion information and a reference to a row of at least one other table in the database; and,

following the determining step:

fashioning the second table responsive to an item identifier attribute of the first table; and

picking at least one row from the first table or the second table; and,

receiving an identifier comprising at least a portion of the first table; and

fashioning the third table with the identifier.

See supra at 2.

35 U.S.C. § 112 Compliance.

In the Advisory Action dated September 18, 2007 (hereinafter "Advisory Action"), claims 7, 9, and 10 were rejected on the grounds that the amendments proposed by Applicant in the Final Office Action Response were not entered because they raised the issue of new matter.[1]

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[1] Applicants' Final Office Action Response contained only amendments to the claims. *See* Final Office Action Response at 2-3. As explained by the M.P.E.P § 2163.01, "[t]he claim should not be rejected or objected to on the ground of new matter . . . the concept of new matter is properly employed as a basis for objection to amendments to the abstract, specification or drawings attempting to add new disclosure to that originally presented." *See* M.P.E.P. § 2163.01. As such, Applicants will address the Examiner's rejection to entering the amendments contained in the

See Advisory Action at 1. Specifically, the Advisory Action stated that "real time generation is not in the specification and therefore, there is no support. *See* Advisory Action at 2. Applicant contends that "real time generation" is supported by the specification.

Support for "real time generation and provision" can be found in the specification. *See* Application at 7, lines 18-25 ("[W]henever the customer goes shopping, he or she may go to one of the kiosks before beginning shopping and presents the card 22 to the customer interface 28. The store level computer 12 includes means for accessing information about the special offers available to the customer associated with the card, and generates a customized list of special offers available to that particular customer. More particularly, the computer 12 determines what special offers are available to this customer, and sends a list of special offers to the offer communicator 32. The customer then has a shopping list of special offers to use while shopping").

More concisely, the application provides, "the customer . . . presents the card 22 to the customer interface . . . [t]he store level computer 12 . . . generates a customized list of special offers available to that particular customer . . . and sends a list of special offers to the offer communicator . . . [t]he customer then has a shopping list of special offers to use while shopping." *See* Application at 7, lines 18-25.

The specification also provides, "[i]f a customer uses his or her card 22 at a customer interface 28 in a store other than their home store, the store level computer 12 communicates with the customer's home store and the customer's account is accessed . . . [t]hus, the customer can obtain a list of special offers even when shopping at another store of a chain of stores." *See* Application at 9, lines 19-23.

Response to Final Office Action as though said rejection were based upon 35 U.S.C. § 112, first paragraph. *See* M.P.E.P. § 2163.06.

Applicant readily acknowledges that the application does not contain the phrase "real time." However, as explained by the M.P.E.P., "the description need not be in *ipsis verbis* [i.e., 'in the same words'] to be sufficient." *See* M.P.E.P. § 2163(II)(A)(3)(a) (citing *Martin v. Johnson*, 172 USPQ 391, 395 (CCPA 1972)). The historical practices of the U.S.P.T.O. support this concept. Based on a review of the patents issued by the U.S.P.T.O. between 1976 and the present, according to a search performed using the U.S.P.T.O. website and its patent search engine, there have been more than 1300 patents issued with claims containing the phrase "real time" when the phrase "real time" is not present in the description or specification.

The "real time" nature of the generation and provision of the instant application's customer incentive report is sufficiently described in the instant application. The ability of a customer to access a store's computer and then be presented with a customized incentive report upon request is the quintessence of "real time generation and provision." *See* Application at 7, lines 18-25 and Application at 9, lines 19-23.

Those skilled in the art would understand the specification as disclosing "real time generation and provision" of a customer incentive report. For example, "real time" is defined by MSN Encarta as "the time in which a computer system processes and updates data as soon as it is received from some external source . . . [t]he time available to receive the data, process it, and respond to the external process is dictated by the time constraints imposed by the process." *See* MSN Encarta *available at* http://encarta.msn.com/dictionary_561507041/real_time.html. Similarly, "real time" is defined by Merriam-Webster On-Line as "the actual time during which something takes place." *See* Merriam-Webster On-Line *available at* http://mw1.merriam-webster.com/dictionary/real%20time. Each of these definitions of "real time" correspond to the instant application's disclosure of a customer requesting a customer incentive report from a store

computer, the computer generating the report, and then providing the report to the requesting customer for use while shopping. Accordingly, the Final Office Action Response's "real time" amendment complies with the strictures of 35 U.S.C. § 112, first paragraph, and should therefore be entered.

Amended Claim 7 is Not Anticipated by *Deaton.*

Per the Final Office Action, claims 7-10 stood rejected under § 102(b) as anticipated by *Deaton* (U.S. Patent No. 5,649,114). According to MPEP § 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Accordingly, the Final Office Action Response amended claim 7 to recite subject matter, i.e. "real time generation and provision" of customer incentive reports, not disclosed by *Deaton.*

Reserving all previous arguments, Applicant asserts that *Deaton* does not teach the *"real time* generation and provision *to a customer* of a customer incentive report remote from a point of sale." *See supra* at 1, amended claim 7.

As explained by the Court of Appeals for the Federal Circuit: "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). *Deaton* is silent with regard to the instant application's *"real time* generation and provision *to a customer* of a customer incentive report remote from a point of sale."

Deaton's teachings regarding its provision of coupons are limited in two ways that prevent *Deaton* from anticipating currently amended claim 7. First, *Deaton* teaches that its coupons are provided at the point-of-sale, not at a location remote from the point-of-sale. *See Deaton* at ABSTRACT; *see also* Figures 17-45B (all figures are directed to the point of sale); col. 70, lines

30-31; col. 73, lines 55-60 ("FIGS. 19-45A-B illustrate various apparatus and program flow diagrams of a system which not only performs automatic payment processing of a customer's payment at the POS but also generates automatic targeted marketing to the customer at the POS . . . ."). Thus, in its preferred embodiment, *Deaton* cannot anticipate amended claim 7's element concerning the provision of "a customer incentive report remote from a point of sale." *See supra* at 2, amended claim 7.

Second, while *Deaton* includes a limited discussion regarding generating coupons to be mailed to customers that arguably could be read as the "provision to a customer of a customer incentive report remote from a point of sale," this liberal reading is not enough to anticipate amended claim 7. *See Deaton* at col. 58, line 42 – col. 70, line 28. *Deaton*'s disclosure regarding the mailing of coupons does not anticipate amended claim 7 because *Deaton*'s disclosure regarding the mailing coupons, on its face, precludes the *"real time* generation and provision *to a customer* of a customer incentive report." *See supra* at 2, amended claim 7. Because *Deaton* teaches that its coupons are to be mailed, the coupons cannot be provided to the customer in real time upon generation. *See, e.g., Deaton* at col. 63, lines 38-39 ("the store can then mail out direct mail enticements to the customer . . . ."); and col. 65, lines 22-24 ("coupons or other enticements can be mailed directly to customers . . . .").

Because amended claim 7 is not anticipated by *Deaton,* it is in allowable form. Additionally, because claims 9, 10 and 16-32 are dependent on amended claim 7, claims 9, 10 and 16-32 are also allowable.

New Claims

Claims 16-32 are newly added. Because claims 16-32 depend from amended claim 7, and amended claim 7 is presented in allowable condition, dependent claims 16-32 are also allowable. Support for new claims 16-32 is found in the specification. The following is a summary of the new claims and their corresponding support in the specification:

16. The method of claim 9 wherein the computer-readable copy of the customer incentive report includes current incentive offers, future incentive offers, or a combination thereof. *See* Application at 5, lines 16-25.

17. The method of claim 16 wherein the offers disclose pricing information. *See* Application at 5, lines 17-18.

18. The method of claim 16 wherein the offers disclose wellbeing information. *See* Application at 5, lines 21-23.

19. The method of claim 18 wherein the wellbeing information comprises nutritional information, caloric information, cholesterol information, or combinations thereof. *See* Application at 5, lines 21-23.

20. The method of claim 10 wherein the printed copy of the customer incentive report includes current incentive offers, future incentive offers, or a combination thereof. *See* Application at 5, lines 16-25.

21. The method of claim 20 wherein the offers disclose pricing information. *See* Application at 5, lines 17-18.

22. The method of claim 20 wherein the offers disclose wellbeing information. *See* Application at 5, lines 21-23.

23. The method of claim 22 wherein the wellbeing information comprises nutritional information, caloric information, cholesterol information, or combinations thereof. *See* Application at 5, lines 21-23.

24.　The method of claim 9 wherein the computer-readable copy of the customer incentive report includes customer loyalty program information. *See* Application at 7, lines 27- Application at 8, line 4.

25.　The method of claim 10 wherein the printed copy of the customer incentive report includes customer loyalty program information. *See* Application at 7, lines 27- Application at 8, line 4.

26.　The method of claim 7 wherein the product information comprises pricing information. *See* Application at 5, lines 8-10.

27.　The method of claim 7 wherein the product information comprises wellbeing information. *See* Application at 5, lines 21-23.

28.　The method of claim 27 wherein the wellbeing information comprises nutritional information, caloric information, cholesterol information, or combinations thereof. *See* Application at 5, lines 21-23.

29.　The method of claim 7 wherein the purchase information comprises information concerning product purchases organized by calendar events. *See* Application at 5, lines 13-15.

30.　The method of claim 7 wherein the customer is associated with a customer account. *See* Application at 6, lines 13-19.

31.　The method of claim 30 wherein at least one distinct customer comprises the customer account. *See* Application at 6, lines 13-19.

32.　The method of claim 30 wherein the customer account is accessed via input of a machine readable identifier. *See* Application at 6, lines 13-24.
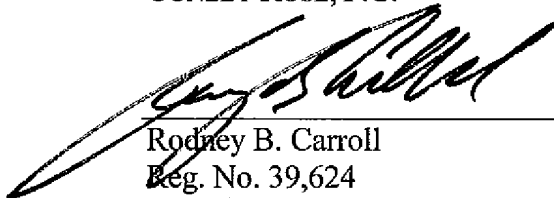
CONCLUSION

Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections and objections is respectfully requested by the Applicants. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Advisory Action dated September 18, 2007 and the Final Office Action dated July 13, 2007 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to contact the undersigned at the telephone number given below.

Respectfully submitted,
CONLEY ROSE, P.C.

Date: 10-15-07

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